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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,451	04/06/2001	Robert F. Terry	52723.00002	6181

7590

05/20/2005

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EXAMINER

PYZOCHA, MICHAEL J

ART UNIT

PAPER NUMBER

2137

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/827,451

Applicant(s)

TERRY, ROBERT F.

Examiner

Michael Pyzocha

Art Unit

2137

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14, 15 and 40-48 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12, 14, 15 and 40-48 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-12, 14-15, 40-48 are pending.
2. Amendment filed 04/29/2005 has been received and considered.

Claim Objections

3. Claim 2 recites "The method of claim 2" which should read "The method of claim 1." Appropriate change is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-4, 8, 12, 14-15, and 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tingley et al (U.S. 6,708,211) and further in view of Evoy (U.S. 6,591,377) and further in view of Brain (How Stuff Works).

As per claims 1, 14-15 Tingley et al discloses a method of detecting states that are activated by a computer unit

Art Unit: 2137

comprising: checking a set of values in a memory area of the computer unit or in a proprietary file stored within the computer unit, with each set of values correspond to a state activated by the computer unit, and capturing each set of values to determine each state activated by the computer unit (see column 1 line 62 through column 2 line 1) and alerting when a modification has been made (see column 9 line 61 through column 10 line 27).

Tingley et al fails to disclose the checking includes calculating a maximum base count for entries in a defined registry segment for determining unauthorized behavior a signal file that includes initial registry information, determining if the registry has been modified.

However, Evoy teaches calculating a maximum base count for entries in a defined registry segment for determining unauthorized behavior (see column 3 lines 1-15) and the file with the registry information (see column 5 lines 31-49).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Evoy's method of determining unauthorized behavior in the method of Tingley et al.

Art Unit: 2137

Motivation to do so would have been to allow a user to determine if a particular program is running compared to a previous time (see Evoy column 3 lines 4-15).

The modified Tingley and Evoy system fails to disclose the signal file including boot up files and directories and files and directories that initiate third part programs.

However, Brain teaches why these files and directories should be modified (see page 2).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to monitor Brain's files using the modified Tingley and Evoy monitoring system.

Motivation to do so would have been to protect the system from viruses (see page 1).

As per claims 2-3, the modified Tingley, Evoy and Brain system discloses initiating a parallel registry segment thread to collect registry data (see Tingley et al column 7 lines 6-14).

As per claims 4, 8, the modified Tingley, Evoy and Brain system discloses initiation a parallel operating system segment thread and a polling thread (see Tingley et al column 6 lines 40-46).

Art Unit: 2137

As per claim 12, the modified Tingley, Evoy and Brain system discloses detecting for an unauthorized modification (see Evoy column 3 lines 1-15).

As per claims 40-48, the modified Tingley, Evoy and Brain system discloses restoring the system to an original state (see column 7 lines 27-46).

6. Claims 5, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Tingley, Evoy and Brain system as applied to claims 4, 8 above, and further in view of Glowny et al (U.S. 5,491,791).

As per claims 5, 10 the modified Tingley, Evoy and Brain system fails to disclose analyzing at least one of an operating system directory structure, "root" and all directories and sub-directories, and loading configuration data into memory.

However, Glowny et al teaches these tasks (see column 3 lines 21-30 where it is clear that a virus scanner scans all files and therefore all directories).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Glowny et al's analyzing, scanning and loading in the modified Tingley, Evoy and Brain system.

Art Unit: 2137

Motivation to do so would have been to allow for scanning to be more readily performed (see Glowny et al column 3 lines 21-30).

7. Claims 6, 9, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Tingley, Evoy and Brain system as applied to claims 1, 8 above, and further in view of Brooks et al (U.S. 6,047,312).

As per claim 6, the modified Tingley, Evoy and Brain system fails to disclose initiating a parallel third party segment thread.

However, Brooks et al teaches initiating a third party segment thread (see Brooks et al column 8 lines 34-56).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Brooks et al's method of a parallel third party thread in the modified Tingley, Evoy and Brain system.

Motivation to do so would have been to obtain information on a third party (see Brooks et al column 8 lines 34-56).

As per claim 9, 11, the modified Tingley, Evoy, Brain and Brooks et al system discloses loading configuration data and third party start up information (see Brooks et al column 8 lines 43-56 where the registry information is the configuration data and start up information).

Art Unit: 2137

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Tingley et al, Evoy, Brain and Brooks et al system as applied to claim 6 above, and further in view of Glowny et al (U.S. 5,491,791).

As per claim 7 the modified Tingley et al, Evoy, Brain and Brooks et al system fails to disclose analyzing at least one of scanning all third party start up and initiation files.

However, Glowny et al teaches these tasks (see column 3 lines 21-30 where it is clear that a virus scanner scans all files and therefore all directories).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Glowny et al's analyzing, scanning and loading in the modified Tingley et al, Evoy, Brain and Brooks et al system.

Motivation to do so would have been to allow for scanning to be more readily performed (see Glowny et al column 3 lines 21-30).

Response to Arguments

9. Applicant's arguments, with respect to the prior art rejections, towards claims 1-12, 14-15, have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 2137

10. Applicant's arguments filed 04/29/2005 have been fully considered but they are not persuasive. With regard to Applicant's arguments that the combinations would require a substantial reconstruction and redesign of the primary reference and does not provide and systems, methods, etc to permit the systems to work together, Applicant's specification gives what one of ordinary skill in the art at the time of the invention would need to produce Applicant's invention and in the specification Applicant is silent as to how the elements of the invention work together. It is therefore improper to argue one of ordinary skill in the art at the time of the invention would require systems, methods, etc explaining how the elements work together in the combined references.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Breggin (US 6560776 B1) discloses a method of software verification, Sobel (US 6785818 B1) discloses a method of monitoring the registry, and Hodges (US 6035423 A) discloses a method of automatic updating.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael

Art Unit: 2137

Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJP



ANDREW CALDWELL
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